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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0669**

Rosemary Gyawu,
Relator,

vs.

St. Therese Home, Inc.,
Respondent,

Department of Employment and Economic Development,
Respondent.

**Filed December 24, 2018
Affirmed as modified
Klaphake, Judge***

Department of Employment and Economic Development
File Nos. 35858589-3; 36068309-3

Rosemary Gyawu, Crystal, Minnesota (pro se relator)

Lee B. Nelson, St. Paul, Minnesota (for respondent department)

Considered and decided by Bjorkman, Presiding Judge; Worke, Judge; and
Klaphake, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Relator Rosemary Gyawu challenges the determination of an unemployment-law judge (ULJ) that she committed misrepresentation by submitting inaccurate information to the Minnesota Department of Employment and Economic Development (DEED) without a good-faith belief as to the correctness of the information, and argues that she did not have a fair hearing. Because the record demonstrates that relator had a fair hearing and because substantial evidence in the record supports the ULJ's determination that relator did not have a good-faith belief as to the correctness of the information she submitted to DEED, we affirm. Because the ULJ inaccurately calculated the amount that relator was overpaid, we modify to reflect the correct amount of the overpayment.

DECISION

I. Relator had a fair hearing.

The ULJ has an obligation to conduct a hearing that clearly and fully develops the relevant facts and preserves the parties' rights to a fair hearing. Minn. R. 3310.2921 (2017). "Each party may examine witnesses, cross-examine the other party's witnesses, and offer and object to exhibits." *Ywswf v. Teleplan Wireless Servs., Inc.*, 726 N.W.2d 525, 529 (Minn. App. 2007); *see also* Minn. R. 3310.2921.

In this case, relator first argues that the hearing was unfair because she did not have all of the exhibits. The ULJ asked about the exhibits at the start of the hearing. When he realized that relator may not have all the exhibits, he asked her if she wanted to delay the hearing to ensure she had all of the exhibits. Relator stated that she wanted to proceed, and

she did not object to the ULJ admitting all of the exhibits. Relator's lack of any of the exhibits under these circumstances did not render the hearing unfair. Furthermore, relator makes no argument as to how the lack of any exhibits may have prejudiced her. *See Midway Ctr. Assocs. v. Midway Ctr. Inc.*, 237 N.W.2d 76, 78 (1975) (explaining that to prevail, an appellant must show both error and resultant prejudice).

Relator further argues that the hearing was unfair because the ULJ had difficulty understanding her during the hearing. A ULJ is required to "provide an interpreter, when necessary, upon the request of a party." Minn. R. 3310.2911 (2017). And a ULJ must "continue any hearing where a witness or party needs an interpreter in order to be understood or to understand the proceedings." *Id.*

Here, relator did not request an interpreter, and the record does not indicate that the ULJ did not understand her position or that she did not understand the proceedings. *See Ywswf* 726 N.W.2d at 530 (finding relator's rights were not prejudiced when she did not request interpreter and the record did not indicate that she did not understand the proceedings or that the ULJ did not understand her). Although the ULJ expressed difficulty understanding relator at times, he consistently asked her to repeat or clarify her statements to ensure he understood her. The ULJ did not cut her off or limit her ability to testify, and the record demonstrates that relator was able to explain her position. Relator does not cite to any specific information or argument that the ULJ failed to understand which might have prejudiced her case. *See Midway*, 237 N.W.2d at 78. Contrary to relator's assertion, the ULJ conducted an even-handed, fair hearing.

II. Substantial evidence in view of the entire record supports the ULJ's finding that relator committed misrepresentation.

When reviewing the decision of a ULJ, we may affirm the decision, remand it for further proceedings, or reverse or modify it if the substantial rights of the relator have been prejudiced because the findings, inferences, conclusion, or decision are “unsupported by substantial evidence in view of the entire record as submitted.” Minn. Stat. § 268.105, subd. 7(d) (2018). “[Appellate courts] review the ULJ’s findings of fact in the light most favorable to the decision and will not disturb those findings as long as there is evidence in the record that reasonably tends to sustain them.” *Wilson v. Mortg. Res. Ctr., Inc.*, 888 N.W.2d 452, 460 (Minn. 2016) (quotations omitted). “Credibility determinations are the exclusive province of the ULJ and will not be disturbed on appeal.” *Bangtson v. Allina Med. Grp.*, 766 N.W.2d 328, 332 (Minn. App. 2009) (quotation omitted). We apply a de novo standard when reviewing questions of law. *Superior Glass, Inc. v. Johnson*, 896 N.W.2d 137, 142 (Minn. App. 2017).

“An applicant has committed misrepresentation if the applicant is overpaid unemployment benefits by making a false statement or representation without a good faith belief as to the correctness of the statement or representation.” Minn. Stat. § 268.18, subd. 2(a) (2018). “After the discovery of facts indicating misrepresentation, the commissioner must issue a determination of overpayment penalty assessing a penalty equal to 40 percent of the amount overpaid.” *Id.*

In this case, relator worked part time as a nursing assistant for 17 weeks while receiving unemployment benefits. Each week, relator submitted information to DEED

stating the number of hours she worked and her income. Relator submitted inaccurate information every week, underreporting the number of hours she worked 15 out of 17 weeks, and underreporting her income all 17 weeks. Relator admitted that she submitted inaccurate information and that she was overpaid as a result. But relator argues that she had a good-faith basis for her inaccurate submissions.

Relator testified that she did not know exactly how many hours she worked each week or her weekly income because she was paid bi-weekly. She testified that she kept records of her hours and tried to average out her bi-weekly hours and income across each individual week, which led to her unintentionally inaccurately reporting her weekly hours and income. However, this is inconsistent with the record, which shows that relator consistently underreported the number of hours she worked and her income. If relator was accidentally attributing her hours or income to the wrong week, the total number of hours and income she reported would be accurate, with each under report corresponding to an over report in a different week. Instead, relator consistently underreported both the number of hours she worked and her income. The record also indicates that relator's employer tracked her hours and pay electronically and that relator could have checked her paystub or timecard on a computer at any time. Relator admitted that she was aware of this program, but testified that she did not initially understand how to use it, and did not attempt to learn to use it until sometime after she submitted 17 inaccurate reports to DEED.

Relator also testified that someone from DEED told her not to worry if she entered her hours or income inaccurately, and to simply enter what she thought her hours and income were. To the extent relator believed she was not required to enter information

accurately, that would only demonstrate that she did not intend to defraud DEED, it would not show that she had a good-faith belief as to the correctness of her statements, as required by Minn. Stat. § 268.18, subd. 2 (2018). The statute does not require that relator intended to defraud DEED with her false statements; only that she made false statements without a good-faith belief that they were correct. The record contains substantial evidence that supports the ULJ's finding that relator did not have a good-faith belief that the information she submitted to DEED was correct.

III. Amount of overpayment.

DEED acknowledges that the ULJ inaccurately calculated the amount that relator was overpaid; that relator was overpaid \$4,323 and underpaid \$229, for a net overpayment of \$4,094. We, therefore, modify the overpayment amount to \$4,094 and the misrepresentation penalty to 40% of that amount.

Affirmed as modified.